

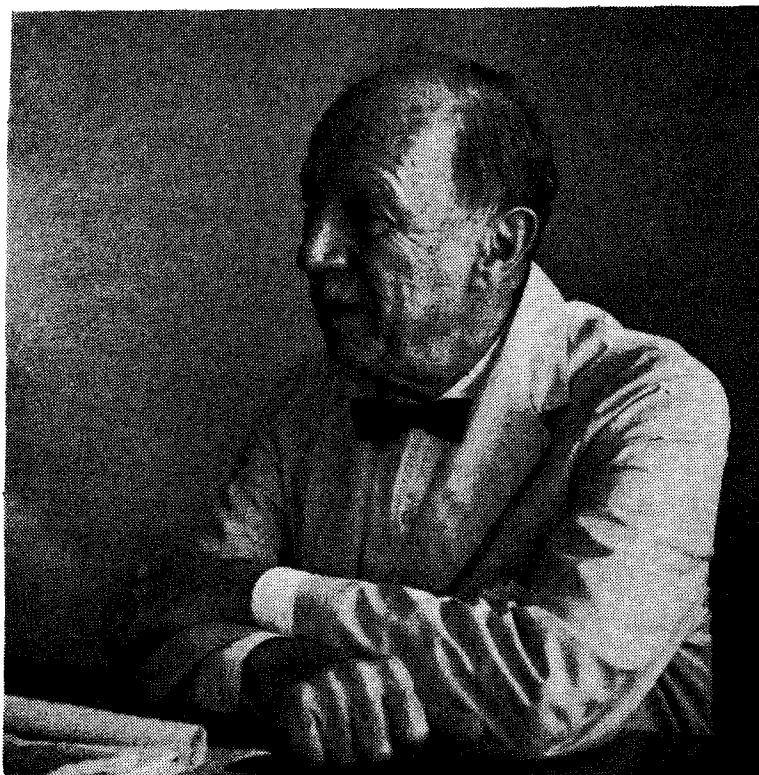
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AN INTERVIEW WITH LOWELL B. MASON

The Hon. Lowell B. Mason, a practicing lawyer, has been an insider in government circles most of his life. His father was United States Senator William E. Mason; his sister, the first Congresswoman from Illinois; and he himself served in the Illinois State Senate for eight years. Since then he has served as legal counsel to two United States Senate Subcommittees. His speciality is business law.

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Though of opposite political creed, he was a long time personal friend of Senator Harry Truman. Both were ardent Washington baseball fans. When Mr. Truman became President, Mason was invited to move from a seat in the grandstand to the President's Box. One day their conversation fell on independent administrative law commissions--specifically the Federal Trade Commission. It was generally accepted that the industrial community had, to put it mildly, lost confidence in Federal Trade.

Mason said to the President, "There's an unexpired Republican term on the Federal Trade Commission. I wish you'd appoint me to it. Maybe I could brighten up some of its dark corners."

Mr. Truman appointed him to the vacancy and later (in spite of the protests of important Democratic Congressmen who disapproved of Mason's free enterprise views) reappointed him to the full seven-year term.

During Mason's eleven years on the Federal Trade Commission he wrote more dissenting opinions than all other Federal Trade Commissioners within the history of the agency. In the administrative law world he is known as the "Great Dissenter". A collection of Commissioner Mason's opinions, THE LANGUAGE OF DISSENT, is published by Long House, New Canaan, Connecticut. Lest these legal opinions (colloquially and even humorously written though they are) be too technical to inform the general reader, Commissioner Mason has set them in an explanatory framework of eloquence and astonishing frankness. His thesis is the erosion of rights under a bureaucracy, and the specific cases are annotated to illustrate his thesis. The last line of THE LANGUAGE OF DISSENT is: "I invite the reader to concern himself with tyranny."

In the past few years Commissioner Mason has been concerning himself with just that, in articles and speeches before ever-widening audiences.*

Persuasion has some differences of opinion with Commissioner Mason on specific issues (note the references to the Sherman Anti-Trust Act, below), but we consider these differences to be negligible, in the light of our admiration for a man who has devoted himself so single-mindedly to exposing the fallacies and tyrannies of administrative law and to preserving a unified legal system that applies its protections and burdens to all, regardless of their profession or occupation.

*Note: See April issue of Nation's Business, "If Thomas Jefferson Came Back Today", by Commissioner Mason. See Congressional Record for April 7, pages 2028 to 2029, remarks of Senator Cotton. See Congressional Record, May 3, pages 9168 to 9171, remarks of Senator Hruska.

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Some time ago, therefore, David J. Dawson and I journeyed to Washington, D. C. to record this interview.

PERSUASION: Commissioner Mason, How have things changed at the Federal Trade since you wrote THE LANGUAGE OF DISSENT?

COMMISSIONER MASON: The law on the statute books is still the same. But the whims of those who administrate have changed--and I think for the better. Now the Commission leans more towards cooperation with businessmen, instead of suing them. Rand Dixon (the present head of the Federal Trade Commission) said to me recently, "What the hell are you picking on me for, Lowell? We are trying to do what you have been screaming for in your book, THE LANGUAGE OF DISSENT. At least we are trying to stop pot-shot enforcement and to put more muscle in Voluntary Compliance and Education by Advisory Opinions. We no longer believe in Litigation by Ambush and we would like to call the turn with Trade Regulation Rules, Industry Guides and Trade Practice Conferences--before we sue."

PERS: That sounds like Mason's language rather than Rand Dixon's, Commissioner. But what about Federal Trade?

MASON: Oh! that poor dear Federal Trade Commission! I always have had a soft spot in my heart for those who quietly try to mend their ways without a lot of public breast beating. After thirty years of trying to enforce the Robinson-Patman Act -- that's the law which wants to bring social security to the market place -- the Federal Trade finally came to the conclusion it was not God. It couldn't be everywhere and couldn't know everything. I am not sure that it's convinced that the free enterprise system is strictly for those who try to make better mouse traps. Nor am I sure that it realizes that the market is no place for the sick, the halt, the loafers or the incompetents to capitalize on their own disadvantages. They should do that at the welfare agencies. But for the time being Federal Trade has unobtrusively pigeonholed its efforts to shelter all incompetents from the vigors of honest competition. At least insofar as enforcing the Robinson-Patman Edict that no one must be hurt competitively because he is not as good a mouse-trapper as the next fellow.

In the words of some very able anti-trust practitioners speaking

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before a group of lawyers, writers, and government officials recently:* "We are technically dealing with the Robinson-Patman statute which you all know by heart anyway. But what we are actually dealing with is the Federal Trade Commission's administration of it. It has become increasingly fitful, fretful and will-o-the-wispish. As our distinguished conference chairman, Fred Rowe, recently commented, 'a new trend appears to be emerging at the Federal Trade Commission: the quiet chloroforming of the Robinson-Patman Act'." Of course the law is still the same, and anybody else can come in and put it right back into effect. The fact that they have stopped trying to bring social security to the marts of trade doesn't change the fact that the whole concept, the basic concept is wrong.

As Ludwig von Mises says: "It is an old fallacy that it is the legitimate task of civil government to protect the least efficient producer against the competition of the more efficient." That's a distinguished economist's opinion. I agree with von Mises, but the "do gooders"--I hate to use the word "liberal" for the sycophants of mediocrity--but the "do gooders" say we have a false sense of values. So lets ignore our value-judgments and get down to harsh realities. Here is the way Professor Conway Zirkle, a noted biologist, sums them up:** "The famous Marxian objective of 'from each according to his ability to each according to his needs' is moronic (page 34)...literally it holds that the chief end of the able is to cherish and support the ineffective. The ideal of subordinating the interest of the competent to those of the defective is incompatible with what we know of organic evolution. If, in the Pliocene our ancestors had followed this practice, our line of descent would have been swamped by a flood of congenital defectives."

PERS: What is your opinion of the Anti-Trust Laws?

MASON: I take a very dim view of the Robinson-Patman Act, as you can see.

PERS: What about the Sherman Act?

MASON: Oh, I'm for the Sherman Act.

*Remarks of Robert L. Wald before the F.B.A.--B.N.A. Briefing Conference, June 3, 1966, in Washington, D.C.

**Relativism and the Study of Man; Van Nostrand Co., Princeton, N.J.

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PERS: You are for the Sherman Act?

MASON: Oh yes I'm against conspiracies in restraint of trade. I doubt if laissez-faire is strong enough to stand by itself. Now Alan Greenspan, author of Anti-Trust (a pamphlet published by The Nathaniel Branden Institute) thinks laissez-faire is.

PERS: So do we.

MASON: Oh yes, ofcourse you do, my dear Joan. You and David are doing posterity a great service. I can see years from now, after stripping away one hundred feet of sediment (consisting mostly of incinerated bricks, steel beams and melted glass) paleontologists will discover the outlines of a huge megalopolis with sub-sub basements still intact. Here they will find copies of Persuasion, The Objectivist, Human Events, Nation's Business, and U. S. News & World Report.

These incunabulae of widely divergent formats will be rushed to the Head of the Ant State.

"Eureka!" he will cry. "Now we have proof positive that even as late as 1966 A.D. there were still extant small sects of people who believed in the sanctity of the individual and who believed that his liberty to win or to lose should be protected by established laws that applied to all, with favoritism to none." As the Chief Ant switches on his Scanscope to observe how the Aluminum, Corn, Labor, Poverty and Disadvantaged Blocs respond to his latest directives, he will mutter to himself: "What a shame the 20th Century Governing Elite had failed to set aside game preserves for the dodos, the wooly mammoths, and those rare birds that wanted to rely on themselves. Our museums have tons of artifacts showing that because the State took care of everybody, everybody was willing for the State to run their lives. Those periodicals are the first glimmerings I have seen which indicate that anybody in those days believed in 'do-it-yourself'."

I look upon your publication and others of the same persuasion (excuse the pun) much as present day historians look upon the manuscripts hidden in the monasteries of Europe during the Dark Ages--a secret enclave of a higher ethnic that neither the present Governing Elite nor the present Public Consensus will support.

PERS: But Commissioner Mason, if you recognize our sterling quality, why aren't you with us?

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MASON: I am. Our ends are the same, but our means are different. You are apolitical. I am a political animal. Politics is the law of the possible. The Sherman Act is the product of politics. It condemns coercion; the coercion of two or more private citizens to restrain private enterprise. My father voted for it. So far so good. But because it's political it has lost, over the years, its purpose. When passed, the ban against restraints on trade applied across the board to our national economy. I do not say it was enforced. That would violate the law of the possible. I say it applied.

Today over twenty important segments of our national economy are by legislative whim or judicial fiat exempted from its mandate. I would say when you exempt Organized Labor, Farm Subsidies, Webb-Pomerene associations, Insurance, Fisheries, Shipping, Defense Production and Small Business there is not much more than a few little hoe manufacturers and a dozen big electric company officials who can be sent to jail for violating the Sherman law.

It frightens me to consider how much your liberty depends on which power bloc you belong to. So you see, when I said I was for the Sherman Act I meant fresh out of the box, not after seventy-five years of Congressional mauling. All this Congressional mauling is leading us into the Dual State.

PERS: What is the Dual State?

MASON: One set of orders based upon the whim of bureaucrats for the men in business, and law for everybody else.

Law is--what is law? It is a set of known rules. Rules which affect everybody. It is not whim. This is one of my indictments of the Federal Trade Commission Act. It moves the guidance a man must anticipate out of the area of known law and puts it in the area of unknown whim. As I said in THE LANGUAGE OF DISSENT, it is whatever the condition of the liver of the five Commissioners is when they get out of bed in the morning. It is their livers which determine how a businessman should operate.

I was a great success as an anti-trust lawyer before I went on the Commission. I made a lot of money. Not as a specialist in the law; I was a specialist in five livers. I could tell you what their reaction was going to be, no matter how screwy. I would say to my client: "Now I'm not giving you the law; any lawyer with a library can do that." I ate and slept and

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went to parties with bureaucrats. I knew their livers and their peccadillos and how they felt business should be run. And this is what the businessman wanted to know. He wanted certainty and Lowell Mason gave him certainty, and he gave me good fees for this.

But that is no way to run a railroad--nor a government either. You can't have a Dual State in a Constitutional Democracy. Two sets of rules in one country do not add up to liberty. I feel a good deal like Wayne Morse. He said to me, "Lowell, you take away procedural protections; you take away a man's liberty." And how right he is! You have to go through certain machinery to protect liberty and it's darn cumbersome. The Governing Elite want to get rid of it: it's too cumbersome.

Liberty? Well, there is no such thing, unless you have responsibility. And back before 1776, why, people didn't have the responsibility of passing their own laws; they didn't have to select people to sit down in judgment. There were Orders in Council; there were edicts--people didn't have the responsibility of punishing anybody. Because the King or his catchpols were the ones who punished.

And then, all of a sudden, they decided, well, if we want liberty (somebody slipped that into the Constitution) you also have to take responsibility. You have to choose who among your colleagues would have to take the trouble to pass your laws. And before the State punishes somebody, you're going to have to shift all of that burden from the poor King, who's been hanging and burning people, and put this burden on the people with a regular trial by jury. And in order to make doubly sure, you're going to have judges who don't act as prosecutors; and in order to make triply sure, you're going to say that every man is presumed innocent.

PERS: Was this an entirely new ideology?

MASON: In France it wasn't so. In Germany it wasn't so. It wasn't even so in England except as far as the nobles were concerned--Magna Carta didn't grant the peasants equal rights, only the nobles.

So then the people found that they were saddled with all these responsibilities. Of passing the laws, and deciding who should be punished, and deciding how much they would pay for supporting the machinery which had to carry all these things out. And frankly, some folks got tired of all this. And not only tired, but careless about it. So now you have Senator Clark of Pennsylvania saying that in order to save democracy (and I have to laugh at this, he sounds just like the Russians talking about their Peoples Republic) he says, in order to save democracy we've got to take away power from the legislature, and give it to the Chief Executive. And, the New York Times Magazine prints a fervent plea by a college professor that the Constitution

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should be amended so the President could stay in for life if we liked him well enough. You see, my whole feeling is against it; I'm against the administrative function not being subject to the same laws that apply to the rest of us. That's the trend towards the Dual State.

PERS: Where did you get the phrase the Dual State?

MASON: The Dual State is the title of a book by Ernst Frankel. (Oxford Univ. Press). He was a German refugee; when Hitler came to power he escaped to this country. The Dual State is the state that has two systems of power which have nothing to do with each other. Germany had a constitution: it had law courts; and they were pretty good. But it had another system of power, the Gestapo and the concentration camps, that the courts had nothing to do with. France has a modified Dual State today. And one of our United States Senators suggests perhaps we should "follow de Gaulle's example"!

PERS: Is this the star-chamber state?

MASON: No, it's the prerogative state. According to Locke, you have four divisions of power. Frankel goes into this philosophy in great detail. I'm just giving you an off-the-top account. We speak of the separation of powers-- the legislative, judiciary, and executive. That's the normative state. Now Locke speaks of the fourth power, which is the unchallenged one, and that's the right of prerogative. The king can do no wrong; although he can also have his parliament, and his judges, and all that. The prerogative state has no limit to it. It recognizes none of the things which are the Constitutional prohibitions; it doesn't have to recognize them. Just as here, every time a car with a diplomatic license runs into somebody, this is an example of prerogative. In Russia it is the Party, and in France, it is de Gaulle. Administrative internees are in prison in France today, not from a law that was passed, not because the executive prosecuted them, and not because a judge sent them there. They're in jail because of de Gaulle's administrative prerogative which is above the law. And of course, this is what I think we could come to here. Because all of the legalists say, "Well, administrative law is here to stay." We're getting away from Constitutionalism and into the Dual State. This, I'm against.

PERS: You say there is a possibility of this sort of tyranny here?

MASON: Well, it's already here on the statute books. It's already here in the decisions.

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I'm not talking about laws controlling those charged with criminal offenses. I'm talking about administrative court rulings controlling those in commerce. I guess that is about nearly everybody, except government officials and burglars. A cop can't rifle a burglar's files without a warrant. But an economic investigator just out of curiosity (as the Supreme Court says) can go through your business records any time between sunup and sundown. Recently the Supreme Court said a cop can't grab a man off the street and hold him incommunicado. But in some states bureaucrats can do this to you any time they want to learn "what's damaging to the economy". But nobody cares, because everybody is living high on the hog and the word has gone out: Now that the precedents for the Dual State are established, take it easy. If things don't go our way, then we can crack the whip.

PERS: And I imagine you've done some thinking about this.

MASON: Very much.

PERS: We'd be interested to know what you've been thinking about it.

MASON: Well, Senator, I'm glad you asked that. Because I'm committed. This is my raison d'etre. I'm going to do just writing and speaking. Not like Persuasion, and not in competition with it.

PERS: It's a wide open field!

MASON: You are in the intellectual area, for people who are hungry for what you are doing. But I'm writing for the young people who haven't had your training. Now, what is my way of life? I've got von Mises; I've got Hayek; I've got all the Persuasions. Bookcases full. And gee, they're wonderful. But people won't read them. Why should I cite cases and quote Federal Trade Commission decisions and Supreme Court opinions any more? I have already written my LANGUAGE OF DISSENT on the Dual State's tyrannous power of incarceration and inquisition--on the bureaucratic and legislative whims that favor one businessman and send others to jail for doing the same thing. What shall I do to try to make palatable the burdensome responsibilities of liberty and bearable the slow processes of constitutional government? What shall I do to make unpalatable the easy irresponsibility of the Dual State--some call it the Welfare State--with its gentle spoon to the mouth and its quick chain to the throat?

How to make discernable the undiscernable? How to surface the submerged? It's difficult, but this is what I propose to do until I check off this globe--stories, stories, stories. Imagine, even that staid voice of free enterprise, Nation's Business, carried a ghost story by me last April.

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All of my speeches are stories. Let me tell you, folks, at some of these speeches, the place can be packed, and you can hear a pin drop. Why? Because, as T. S. Eliot says, people can only stand so much reality. But say, "Once upon a time," and everybody listens.

---Joan Kennedy Taylor

REVIEWS

THE ABLE DISABLED

Give Us The Tools, by Henry Viscardi, Jr., Paul S. Eriksson, Inc., New York, 1959.

On a large tract of land in Albertson, Long Island, stands an unusual company with an unusual name--Abilities, Inc. The name is even more intriguing when one learns that all its employees have been drawn from the roles of the so-called "disabled."

Give Us the Tools is the history of this company, warmly related by its president and founder, Henry Viscardi, Jr. Mr. Viscardi tells an inspiring story of men and women who possess an indestructible spirit, emphasizing the vital role of productive work in the lives of such people.

The author's own personal struggle and triumph provides a fascinating preface to the book. Born in 1912, with no legs, he faced a most precarious future in which his only means of mobility was to stomp about in heavily padded boots. But, young Mr. Viscardi was a courageous child who refused to let his handicap overwhelm him. His monumental perseverance enabled him to achieve what is too often considered impossible for a person in his circumstances. After racing through elementary and high school in eight years, he

financed his own college education and went ahead to law school by earning money at whatever jobs he could find--among them, the unlikely position of basketball referee.

At age 26, he was finally successfully fitted with artificial legs, and for the first time, Henry Viscardi faced the world, not from his familiar level of less than four feet, but, as a grown man, five feet, eight inches tall. His early career was channelled in directions totally unrelated to the field of rehabilitation, but during World War II he worked closely with amputees, teaching them how to walk on their new legs and providing encouragement in every way he could. It was this experience which ultimately led him to the creation of Abilities, Inc. The enormous problems faced by these young disabled men in seeking employment filled him with anger and frustration. Often, the veterans were welcomed home with gala parades and speeches, gifts were showered on them with affection and good wishes, but in seeking jobs they met with continued refusal. Mr. Viscardi realized that the problem was not confined to wounded veterans--such was the plight of most handicapped people. He decided to leave his job as personnel director of a large textile firm and devote his full time to changing the prevailing view of disabled men and women, which had unjustly and unrealistically relegated them to the ranks of helpless people.

"It seemed so plain to me," he said, "that there were no disabled people--only people with varying degrees of ability at varying tasks.... Neither pensions, parades nor pity can compensate for the sweet dignity of productive life."

At first, Mr. Viscardi worked with a rehabilitation organization, affiliated with New York University's Bellevue Hospital, whose purpose it was to find employment for disabled people, but he was constantly consumed with a dream he had of a shop where the "so-called disabled could display their abilities for everybody to see....We'd throw out the old insulting notion that disabled people should be protected like backward children. We'd dispense, too, with charity drives and professional hand holders. We'd run a real shop...show a profit...change America's whole thinking on this problem of the disabled worker."

He appealed to businessmen for a small amount of private investment to get the company started, speaking at luncheons, town meetings and the like. Sometimes interest was initially keen, but then disappeared; sometimes he met with outspoken opposition to his idea of how to behave toward the handicapped, particularly from social workers, about whom Mr. Viscardi has

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this to say: "I began to suspect that some of the professional workers... lived off cripples. Unconsciously, perhaps, they didn't want to see this problem solved."

Henry Viscardi's perseverance paid off again and in 1952, he opened Abilities, Inc. It started in an old empty garage with four employees "who had only five good arms among them, only one good leg." In five years it was a million dollar business, filling contracts to manufacture diversified types of electronic equipment, such as printed circuits for Dictaphone Corporation and a cable assembly job for Grumman Aircraft: all work that involves extremely intricate and delicate handling. The story of the company's growth and the spirit displayed by the workers is inspiring reading, indeed. The author cites case after case which shows that his employees consider the chance to work and be independent the most precious value in life--and which shows the extent of the effort they will put forth to get this chance and keep it. For instance, he tells of a polio victim paralyzed in both arms and both legs who could barely lift his hands when he first started, but, who learned through a tenacious struggle (common to all the people at Abilities, Inc.) to do more and more exacting work. Another example is the first head of the purchasing department whom he describes as a man who "had high blood pressure, a poor heart, a weak back, hernia, and an incurable zest for life and work."

The author is especially articulate about the value of independence. He stresses it throughout the book; on one occasion, he refused offers of land and buildings from business groups because he feared that the company's autonomy might be threatened. He writes: "I was afraid that we might get involved with other organizations, become subject to policies and programs that were not our own....I'm trying to prove that we are independent." The workers at Abilities share Mr. Viscardi's love of self-reliance. They demonstrated it once by asking him to refuse government funds from the Division of Vocational Rehabilitation to avoid periodic investigations and questionnaires. They agreed to tighten up the budget and postpone raises in order to be able to run things completely their own way.

The example of Abilities, Inc. has done a great deal to change medical opinions, too. The therapeutic results evidenced at Mr. Viscardi's thriving business have not escaped the eye of industrial doctors. Regarding most medical surveys of the hazards of hiring disabled workers, the author writes, "More than half of the nation's plant physicians...thought it unwise or unsafe to hire a heart patient. Two-thirds...would reject the blind and amputees,

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four-fifths would turn down paraplegics, epileptics or those suffering from cerebral palsy. More than 90 per cent wouldn't pass a worker suffering from active rheumatoid arthritis. We had people in all of these categories--and some with problems even worse....Abilities is in business to prove that this whole dammed blacklist is absolutely wrong."

The plant safety record at Abilities was almost twice as good as the average industry. And, the physical improvement shown by many employees was impressive. "We had people who quit stuttering at Abilities, and a deaf and dumb man who started talking, and a paraplegic who...wiggled his finger for the first time in ten years....I could find examples all over the plant.... Work seemed a wonder drug for many ills of both body and mind."

Mr. Viscardi, in addition to running the company, spent a great deal of time touring other plants and lecturing to plead the case of the disabled worker. He was willing to extend himself exhaustively to further his cause; he employed one tricky technique that usually was a sure-fire argument. He describes such an occasion: "At one plant I arranged to disguise myself as a regular employee. I worked in the tool crib for awhile, was transferred to the foundry department, did paint spraying and other jobs. Then I sat in at a plant conference on hiring the disabled...the plant superintendent...turned to one of the supervisors. 'What would your reaction be to trying an amputee in your department?' The man shook his head. 'Wouldn't work.' 'Why not?' 'We've got a tough schedule to meet. We don't have time to fool around with a one-armed or one-legged man. Hank has worked in my department, he ought to know that.'" It was at this point, of course, that Hank Viscardi was dramatically exposed as a no-legged man, leaving the recalcitrant supervisor speechless.

Abilities, Inc. has adopted a credo--a statement which beautifully sums up the position of Henry Viscardi and his admirable staff: "I seek opportunity, not security....I will not trade my dignity for a handout....It is my heritage to think and act for myself....I do not choose to be a common man. It is my right to be uncommon--if I can."

This attitude was further displayed by the author when he voluntarily attended hearings of the Senate Finance Committee on a proposed bill which provided for social security retirement of disabled people at 50 years of age. He spoke out strongly against the bill: "There is nothing which can substitute for...the wish to live and work in dignity, in free and open competition with all the world....Should we stigmatize our disabled people with a productive

age limit of 50 we might seem to condone the ignorance and prejudice that now prevents them from exercising the abilities they have....I have spent my life close to this problem of disability...solutions can be found in the competitive, free enterprise spirit of our country."

It is this last thought expressed by the author that makes Give Us the Tools an important book. Although Mr. Viscardi never discusses politics or economics, as such, his story adds up to an eloquent testimonial to the ideals of the only economic system in which every man has the chance to reach his highest potential--a system totally free of government interference, where values are freely traded--laissez-faire capitalism.

The free competitive spirit that Mr. Viscardi refers to is now in the gravest danger of being destroyed. Government policies are continually expanding in the direction of a socialized system in which every man's independence is subordinated to the state. As exemplified by the current administration's concept of the "Great Society," Washington is assuming more and more the paternal role, providing so-called "assistance" to the so-called "needy." The programs are intolerable, first and foremost, on the ground that government "assistance" is made possible only by expropriating money from some people and redistributing it among others. Give Us the Tools brings up a further important objection--an objection raised by those who are intended to be the beneficiaries of such policies. Moreover, it is an answer to the argument used by many opponents of capitalism who claim that a free market economy is geared only to those of superior strength and ability--that those who can profit by it do so at the expense of the "weak" and "helpless."

Henry Viscardi's book provides abundant evidence that it is only in a free competitive economy that every man, whatever his limits, can have his rightful chance of enjoying the incomparable reward of self-respect that is known only to those who have earned their way--who lead independent productive lives--who know the pleasure of working and keeping the fruits of their labor.

--Lois Roberts

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